

AFFIRMATION

GEORGE BASSIAS, an attorney duly admitted to practice law in New York affirms:

On February 28, 2011 I mailed a copy of the within Appellant Desingation to:

Pryor & Mandelup, PC  
675 Old Country Road  
Westbury, NY 11590

US Trustee  
560 Federal Plaza  
CI, NY 11722


Hisock & Barclay  
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Steven Baum, Esq.  
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2200 Ross Ave., Ste. 2200  
Dallas, TX 75201

By first class mail.

Dated: Queens, NY  
February 28, 2011

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George Bassias

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

FERREL L. AGARD.

**Appellate Designation**

Appellant.

Bankruptcy Case No.-810-77338-reg

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**The appellant's designation of the record on appeal is as follows:**

1. Docket # 10: Motion for Relief from Stay.
2. Docket #13: Affirmation in Opposition by George Bassias on behalf of Ferrel L. Agard.
3. Docket #14: Response filed by Marin L. Buczkowski on behalf of Select Portfolio Servicing, Inc.
4. Docket #19: Memorandum of Law in Support of *Motion Seeking to terminate the Automatic Stay* Filed by Amy E. Polowy.
5. Docket #20: Emergency Motion to Intervene Filed by Susan R. Katzoff.
6. Docket #21: Order to Show Cause for Emergency Application to Intervene.
7. Docket #27: Transcript regarding the hearing held on 12/13/10.
8. Docket #28: Notice of Filing of Official Transcript.
9. Docket #31: Opposition Affirmation in Opposition *Supplemental Affirmation in Opposition* Filed by George Bassias on behalf of Ferrel L. Agard.
10. Docket #32: Transcript regarding the hearing held on 11/15/10.
11. Docket #34: Affidavit in Support (*Declaration of William C. Hultman*).
12. Docket #35: Memorandum of Law in Support (*Supplmental Brief of MERS*)

13. Docket #36: Affidavit/Certificate of Service Filed by J. Eric Charlton.

14. Docket #37: Brief Filed by Joseph N. Froehlich on behalf of Select Portfolio Servicing, Inc.

15. Docket #41: Memorandum and Decision Granting (RE: related documents Motion for Relief from Stay filed by Creditor Select Portfolio Servicing, Inc.


16. Docket #42: Order Granting Motion for Relief from Stay on behalf of Select Portfolio Servicing, Inc.

17. Docket #43: Notice of Appeal to District Court.

**The appellant's designation of the statement of issues appealing the, February 10, 2011, decision of Honorable Robert E. Grossman is as follows:**

The assignment of the mortgage from the Mortgage Electronic Registration System a/k/a MERS, as a "nominee" for the original note to U.S. Bank is not a valid assignment and is not an enforceable interest in the subject mortgage. U.S. Bank's rights can be no greater than the rights as transferred by its assignor – MERS. Accordingly, because MERS cannot legally hold title to mortgages for its member/lenders as both "nominee" and "mortgagee of record," then U.S. Bank does not hold an enforceable right against the Appellant's real property located in Westbury, New York. Moreover, Select Portfolio does not have standing of the authority to seek relief from the automatic stay because the U.S. Bank does not validly hold the subject note and mortgage. *See, e.g., Greer v. O'Dell*, 305 F.3d 1297 (11 th Cir. 2002); *In Re Woodberry*, 383 (Bankr. D.S.C. 2008). Further, the *Rooker-Feldman* doctrine or *res judicata* is inapplicable here. The *Rooker-Feldman* doctrine or *res judicata* does not bar default judgments in state court and does not bar fraudulent actions in foreclosures by banks. The fraud or misrepresentation committed by MERS is that they foreclose on notes without having proper standing as a valid

secured creditor. Essentially, MERS and its members illegally formulated a practice to bypass the requirements of the traditional mortgage recording process. Thus, this Court should find that *Rooker-Feldman* or *res-judicata* should not bar Appellant's state court default judgment and fraud or misrepresentation by MERS.

  
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Date: 2/28/11